



Agricultural Marketing Service

7 CFR Parts 1005, 1006, and 1007

[Doc. No. AMS-DA-23-0003; 23-J-0019]

Milk in the Appalachian, Florida, and Southeast Marketing Areas; Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the transportation credit balancing fund provisions for the Appalachian and Southeast Federal milk marketing orders and establishes distributing plant delivery credits in the Appalachian, Florida, and Southeast Federal milk marketing orders. More than the required number of producers in the three impacted marketing areas have approved the issuance of the final order.

DATES: This rule is effective March 1, 2024.

ADDRESSES: To review the hearing record and relevant materials, please see <https://www.ams.usda.gov/rules-regulations/milk-appalachian-southeast-and-florida-areas-hearing-proposed-amendments>.

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SUPPLEMENTARY INFORMATION: This rule, in accordance with 7 CFR 900.14(c), is the Secretary's final rule in this proceeding and adopts the amendments detailed in the proposed rule published in the **Federal Register** on December 1, 2023 (88 FR 84038).

This final rule amends the transportation credit balancing fund (TCBF) provisions in the Appalachian and Southeast Federal milk marketing orders (FMMOs or orders) by (1) updating the components of the mileage rate calculation; (2) revising the months of mandatory and discretionary payment; (3) revising the non-reimbursed mileage factor; and (4) increasing the maximum assessment rate on Class I milk. This final rule also establishes distributing plant delivery credit (DPDC) provisions in the Appalachian, Florida, and Southeast FMMOs that will make marketwide service payments to qualifying handlers and cooperatives for milk shipments to pool distributing plants from farms that are year-round, consistent suppliers. As required by regulation, AMS conducted a vote where more than two-thirds of the participating producers approved the amended orders. Thus, AMS is issuing this final rule implementing new and amended provisions.

This administrative action is governed by sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Orders 12866, 13175, 13563, and 14094. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Orders 12866, 13563, and 14094 review.

The amendments adopted in this final rule have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect and will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674) (AMAA), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the AMAA, any handler subject to an order may request modification or exemption from such order by filing a petition with the United States Department of Agriculture (USDA) stating that the order, any provision

of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, USDA would rule on the petition. The AMAA provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review USDA's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified this final rule will not have a significant economic impact on a substantial number of small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. A small dairy farm as defined by the Small Business Administration (SBA) (13 CFR 121.201) is one that has an annual gross revenue of \$3.75 million or less, and a small dairy products manufacturer is one that has no more than the number of employees listed in the chart below:

NAICS Code	NAICS U.S. industry title	Size standards in number of employees
311511	Fluid Milk Manufacturing	1,150
311512	Creamery Butter Manufacturing	750
311513	Cheese Manufacturing	1,250
311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing	1,000

To determine which dairy farms are "small businesses," the \$3.75 million per year income limit was used to establish a milk marketing threshold of 1,220,703 pounds per month. Although this threshold does not factor in additional monies that may be received

by dairy producers, it should be an accurate standard for most "small" dairy farmers. To determine a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 750-employee limit for creamery butter; the 1,000-employee limit for dry, condensed, and evaporated dairy product manufacturing; the 1,150-employee limit for fluid milk manufacturing; or the 1,250-employee limit for cheese manufacturing; the plant was considered a large business even if the local plant does not exceed the 750-; 1,000-; 1,150-; or 1,250-employee limits, respectively.

During March 2023, the milk of 2,191 dairy farms was pooled on the Appalachian (1,359), Florida (83), and Southeast (749) FMMOs. Of the totals, 1,233 farms on the Appalachian FMMO (91 percent), 37 on the Florida FMMO (45 percent), and 658 on the Southeast FMMO (88 percent) were considered small businesses.

During March 2023, there were a total of 17 plants associated with the Appalachian FMMO (16 pool distributing plants and 1 pool supply plant), 7 plants associated with the Florida FMMO (all pool distributing plants), and 16 plants associated with the Southeast FMMO (15 pool distributing plants and 1 pool supply plant). The number of plants meeting the small business criteria under the Appalachian, Florida, and Southeast FMMOs were estimated to be 2 (13 percent), 2 (29 percent), and 2 (13 percent), respectively.

Currently, the Appalachian and Southeast orders provide transportation credit balancing fund (TCBF) payments on supplemental shipments of milk for Class I use provided the milk was from producers located outside of the marketing areas who are not regular suppliers to the market. Producer milk received at a pool distributing plant eligible for a transportation credit under the orders is defined as bulk milk received directly from a dairy farmer (1) from whom not more than 50 percent of the dairy farmer's milk production, in aggregate, is received as producer milk during the immediately preceding months of March through May of each order; and (2) who

produced milk on a farm not located within the specified marketing areas of either order. Milk deliveries from producers located outside the marketing area who are consistent suppliers to the market, or from producers located inside the marketing areas, is not eligible for transportation credits.

This final rule amends the Appalachian and Southeast TCBF provisions. Specifically, the amendments amend the non-reimbursed mileage level from 85 miles to 15 percent of total miles and update components of the mileage rate factor to reflect more current market transportation costs.

The amendments also will increase the maximum TCBF assessment rates for the Appalachian and Southeast orders. Specifically, the maximum transportation credit assessment rate for the Appalachian and Southeast orders will increase to \$0.30 and \$0.60 per hundredweight (cwt), respectively. The increases are intended to minimize the proration and depletion of each order's TCBF to provide more adequate TCBF payments.

This final rule also adopts DPDCs in the Appalachian, Florida, and Southeast FMMOs to provide transportation assistance to handlers and cooperatives procuring year-round, consistent milk supplies for the region. Currently, there are no provisions in any of the three southeastern FMMOs to provide transportation assistance to handlers and cooperatives for these types of milk deliveries.

The DPDCs adopted in this final rule will operate similar to the TCBF program: (1) DPDCs will be funded through an assessment on Class I producer milk; (2) DPDCs will be payable to handlers and cooperatives for procuring year-round milk supplies as determined by location and delivery criteria; (3) DPDC payment provisions will be identical to those for TCBF payments; and (4) DPDC provisions are designed to safeguard against excess assessment collections and prevent persistent and pervasive uneconomic milk movements for the purpose of receiving a DPDC payment.

The TCBF and DPDC provisions are applied identically to large and small handlers and cooperatives regulated by the Appalachian, Florida, and Southeast FMMOs. Since the amendments will apply to all regulated cooperatives and handlers regardless of their size, the amendments should not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). It was determined that these amendments will have no impact on reporting, recordkeeping, or other compliance requirements because those requirements will remain unchanged. No new forms are proposed, and no additional reporting requirements will be necessary.

This final rule does not require additional information collection that requires clearance by the OMB beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, since the information is already provided, no new information collection requirements are needed, and the current information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

The Agricultural Marketing Service is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

No other burdens are expected to fall on the dairy industry as a result of overlapping Federal rules. This rulemaking proceeding does not duplicate, overlap, or conflict with any existing Federal rules.

Prior documents in this proceeding

Notice of Hearing: Published in the **Federal Register** on January 30, 2023 (88 FR 5800).

Recommended Decision: Published in the **Federal Register** on July 18, 2023 (88 FR 46016).

Final Decision: Published in the **Federal Register** on December 1, 2023 (88 FR 84038)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings upon the basis of the hearing record.

The amendments to the order are based on the record of a public hearing held in Franklin, Tennessee, February 28 - March 2, 2023, pursuant to a notice of hearing published January 30, 2023 (88 FR 5800). The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is determined that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the AMAA;

(2) The parity prices of milk, as determined pursuant to section 2 of the AMAA, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing area. The minimum prices specified in the orders as hereby amended are such

prices as will reflect the aforesaid factors, ensure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

(b) Additional Findings.

The amendments to these orders are known to handlers. The final decision containing the amendments to these orders was issued and published in the **Federal Register** (88 FR 84038) on December 1, 2023.

(c) Determinations.

It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the AMAA) of more than 50 percent of the milk marketed within the specified marketing areas to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the AMAA;

(2) The issuance of this order amending the Appalachian, Florida, and Southeast orders is the only practical means pursuant to the declared policy of the AMAA of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of this order amending the Appalachian, Florida, and Southeast FMMOs is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the respective marketing areas.

List of Subjects in 7 CFR Parts 1005, 1006, and 1007

Milk marketing orders.

Order Amending the Order Regulating the Handling of Milk in the Appalachian, Florida, and Southeast Marketing Areas

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Appalachian, Florida, and Southeast marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

PART 1005 - MILK IN THE APPALACHIAN MARKETING AREA

1. The authority citation for part 1005 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

2. Amend § 1005.30 by:

- a. Redesignating paragraphs (a)(5) through (9) as paragraphs (a)(7) through (11), respectively;
- b. Adding new paragraphs (a)(5) and (6);
- c. Redesignating paragraph (c)(3) as (c)(4) and revising it; and
- d. Adding new paragraph (c)(3).

The additions and revision read as follows:

§ 1005.30 Reports of receipts and utilization.

(a) * * *

(5) Receipts of producer milk described in § 1005.84(e), including the identity of the individual producers whose milk is eligible for the distributing plant delivery credit pursuant to that paragraph and the date that such milk was received;

(6) For handlers submitting distributing plant delivery credit requests, transfers of bulk unconcentrated milk to nonpool plants, including the dates that such milk was transferred;

* * * * *

(c) * * *

(3) With respect to milk for which a cooperative association is requesting a distributing plant delivery credit pursuant to § 1005.84, all of the information required in paragraphs (a)(5) and (6) of this section.

(4) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1005.82, all of the information required in paragraphs (a)(7) through (9) of this section.

* * * * *

3. Amend § 1005.32 by revising paragraph (a) to read as follows:

§ 1005.32 Other reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1000.9(a) and (c) of this chapter shall report to the market administrator any adjustments to distributing plant delivery credit requests as reported pursuant to § 1005.30(a)(5) and (6), and any adjustments to transportation credit requests as reported pursuant to § 1005.30(a)(7) through (9).

* * * * *

4. Amend § 1005.81 by revising the first sentence of paragraph (a) to read as follows:

§ 1005.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90 of this chapter), each handler operating a pool plant and each handler specified in § 1000.9(c) of this chapter shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1005.44 by \$0.30 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June - February period. * * *

* * * * *

5. Amend § 1005.82 by:

a. Revising the first sentence of paragraph (a)(1), the first sentence of paragraph (b), and paragraph (d)(3)(iii); and

b. Adding paragraph (d)(3)(viii).

The revisions and addition read as follows:

§ 1005.82 Payments from the transportation credit balancing fund.

(a) * * *

(1) On or before the 13th day (except as provided in § 1000.90 of this chapter) after the end of each of the months of January and July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1005.30(a)(7), bulk milk transferred from a plant fully regulated under another Federal order as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1005.30(a)(8), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. * * *

* * * * *

(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to the month of February or June if a written request to do so is received fifteen (15) days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. * * *

* * * * *

(d) * * *

(3) * * *

(iii) Subtract 15 percent (15%) of the miles from the mileage so determined;

* * * * *

(viii) The market administrator may revise the factor described in paragraph (d)(3)(iii) of this section (the mileage adjustment factor) if a written request to do so is received fifteen (15) days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such revision is necessary to assure orderly marketing, efficient handling of milk in the marketing area, and an adequate supply of milk for fluid use. The market administrator may increase the mileage adjustment factor by as much as ten percentage points, up to twenty-five percent (25%) or decrease it by as much as ten percentage points, to a minimum of five percent (5%). Before making such a finding, the market administrator shall notify all handlers in the market that a revision is being considered and invite written data, comments, and arguments. Any decision to revise the mileage rate factor must be issued in writing prior to the first day of the month for which the revision is to be effective.

6. Amend § 1005.83 by revising paragraphs (a)(2) through (5) to read as follows:

§ 1005.83 Mileage rate for the transportation credit balancing fund.

(a) * * *

(2) From the result in paragraph (a)(1) of this section subtract \$2.26 per gallon;

(3) Divide the result in paragraph (a)(2) of this section by 6.2, and round down to three decimal places to compute the fuel cost adjustment factor;

(4) Add the result in paragraph (a)(3) of this section to \$3.67;

(5) Divide the result in paragraph (a)(4) of this section by 497;

* * * * *

7. Add § 1005.84 before the undesignated center heading “Administrative Assessment and Marketing Service Deduction” to read as follows:

§ 1005.84 Distributing plant delivery credits.

(a) *Distributing plant delivery credit fund.* The market administrator shall maintain a separate fund known as the Distributing Plant Delivery Credit Fund into which shall be deposited the payments made by handlers pursuant to paragraph (b) of this section and out of which shall be made the payments due handlers pursuant to paragraph (d) of this section. Payments due a handler shall be offset against payments due from the handler.

(b) *Payments to the distributing plant delivery credit fund.* On or before the 12th day after the end of the month (except as provided in § 1000.90 of this chapter), each handler operating a pool plant and each handler specified in § 1000.9(c) of this chapter shall pay to the market administrator a distributing plant delivery credit fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1005.44 by a per hundredweight assessment rate of \$0.60 or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total distributing plant delivery credit disbursed during the prior calendar year. If the distributing plant delivery credit fund is in an overfunded position, the market administrator may completely waive the distributing plant delivery credit assessment for one or more months. In determining the distributing plant delivery credit assessment rate, in the event that during any month of that previous calendar year the fund balance was insufficient to cover the amount of credits that were due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(c) *Assessment rate announcement.* The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90 of this chapter), the assessment rate per hundredweight pursuant to paragraph (b) of this section for the following month.

(d) *Payments from the distributing plant delivery credit fund.* Payments from the distributing plant delivery credit fund to handlers and cooperative associations requesting distributing plant delivery credits shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90 of this chapter) after the end of each month, the market administrator shall pay to each handler that received, and reported pursuant to § 1005.30(a)(5), bulk unconcentrated milk directly from producers' farms, or receipts of bulk unconcentrated milk by transfer from a pool supply plant as defined in § 1005.7(c) or (d), a preliminary amount determined pursuant to paragraph (f) of this section to the extent that funds are available in the distributing plant delivery credit fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the distributing plant delivery credit fund by reducing payments pro rata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (d)(3) of this section.

(2) The market administrator shall accept adjusted requests for distributing plant delivery credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1005.32(a). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of distributing plant delivery credit payments for the preceding month pursuant to the process provided in paragraph (d)(1) of this section. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments to or from the distributing plant delivery credit fund will be made on or before the next payment date for the following month.

(3) Distributing plant delivery credits paid pursuant to paragraphs (d)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant

to § 1000.77 of this chapter. Adjusted payments to or from the distributing plant delivery credit fund will remain subject to the final proration established pursuant to paragraph (d)(2) of this section.

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1005.30(c)(3) prior to the date payment is due, the distributing plant delivery credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(5) The market administrator shall provide monthly, to producers who are not members of a qualified cooperative association, a statement of the amount per hundredweight of distributing plant delivery credit which the distributing plant handler receiving their milk is entitled to claim.

(e) *Eligible milk.* Distributing plant delivery credits shall apply to the following milk:

(1) Bulk unconcentrated fluid milk received directly from dairy farms at a pool distributing plant as producer milk subject to the following conditions:

(i) The farm on which the milk was produced is located within the specified marketing areas of the order in this part or the marketing area of Federal Order 1007 (7 CFR part 1007).

(ii) The farm on which the milk was produced is located in the following counties:

(A) Illinois: Alexander, Bond, Champaign, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Douglas, Edgar, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Johnson, Lawrence, Macon, Marion, Massac, Monroe, Montgomery, Moultrie, Perry, Piatt, Pope, Pulaski, Randolph,

Richland, St Clair, Saline, Shelby, Union, Vermilion, Wabash, Washington, Wayne, White, and Williamson.

(B) Indiana: Bartholomew, Boone, Brown, Clay, Clinton, Dearborn, Decatur, Delaware, Fayette, Fountain, Franklin, Hamilton, Hancock, Hendricks, Henry, Jackson, Jefferson, Jennings, Johnson, Lawrence, Madison, Marion, Monroe, Montgomery, Morgan, Ohio, Owen, Parke, Putnam, Randolph, Ripley, Rush, Shelby, Switzerland, Tippecanoe, Tipton, Union, Vermillion, Vigo, Warren, and Wayne.

(C) Kentucky: Boone, Boyd, Bracken, Campbell, Floyd, Grant, Greenup, Harrison, Johnson, Kenton, Lawrence, Lewis, Magoffin, Martin, Mason, Pendleton, Pike, and Robertson.

(D) Maryland: Allegany, Frederick, Garrett, Montgomery, and Washington.

(E) Ohio: Adams, Athens, Brown, Butler, Clark, Clermont, Clinton, Darke, Fairfield, Fayette, Franklin, Gallia, Greene, Hamilton, Highland, Hocking, Jackson, Lawrence, Madison, Meigs, Miami, Montgomery, Morgan, Perry, Pickaway, Pike, Preble, Ross, Scioto, Vinton, Warren, Washington.

(F) Pennsylvania: Bedford, Fayette, Franklin, Fulton, Greene, and Somerset.

(G) Virginia counties: Albemarle, Amelia, Appomattox, Arlington, Brunswick, Buckingham, Caroline, Charles City, Charlotte, Chesterfield, Clarke, Culpeper, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Fluvanna, Frederick, Gloucester, Goochland, Greene, Greensville, Halifax, Hanover, Henrico, Isle Of Wight, James City, King And Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenburg, Madison, Mathews, Mecklenburg, Middlesex, Nelson, New Kent, Northumberland, Nottoway, Orange, Page, Powhatan, Prince Edward, Prince George, Prince William, Rappahannock, Richmond, Shenandoah, Southampton, Spotsylvania, Stafford, Surry, Sussex, Warren, Westmoreland, York.

(H) Virginia cities: Alexandria City, Charlottesville City, Chesapeake City, Colonial Heights City, Emporia City, Fairfax City, Falls Church City, Franklin City, Fredericksburg City, Hampton City, Hopewell City, Manassas City, Manassas Park City, Newport News City, Norfolk City, Petersburg City, Poquoson City, Portsmouth City, Richmond City, Suffolk City, Virginia Beach City, Williamsburg City, and Winchester City.

(I) West Virginia: Barbour, Berkeley, Boone, Braxton, Cabell, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hardy, Harrison, Jackson, Jefferson, Kanawha, Lewis, Lincoln, Logan, Marion, Mason, Mineral, Mingo, Monongalia, Monroe, Morgan, Nicholas, Pendleton, Pleasants, Pocahontas, Preston, Putnam, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Wayne, Webster, Wetzel, Wirt, Wood, and Wyoming.

(iii) The market administrator may include additional counties from the states listed in paragraph (e)(1)(ii) of this section upon the request of a pool handler and provision of satisfactory proof that the county is a source of regular supply of milk to order distributing plants.

(iv) Producer milk eligible for a payment under this section cannot be eligible for payment from the transportation credit balancing fund as specified in § 1005.82(c)(2).

(v) The quantity of milk described herein shall be reduced by the quantity of any bulk unconcentrated fluid milk products transferred from a pool distributing plant to a nonpool plant or transferred to a pool supply plant on the same calendar day as producer milk was received at such plant for which a distributing plant delivery credit is requested.

(2) Bulk unconcentrated fluid milk transferred from a pool plant regulated pursuant to § 1005.7(c) or (d) to a pool distributing plant regulated pursuant to § 1005.7(a) or (b). The quantity of milk described herein shall be reduced by the quantity of any bulk unconcentrated fluid milk products transferred from a pool distributing plant

to a nonpool plant or transferred to a pool supply plant on the same calendar day as milk was received by transfer from a pool supply plant at such pool distributing plant for which a distributing plant delivery credit is requested.

(f) *Credit computation.* Distributing plant delivery credits shall be computed as follows:

(1) With respect to milk delivered directly from the farm to a distributing plant:

(i) Determine the shortest hard-surface highway distance between the shipping farm's county seat and the receiving plant and multiply the miles by an adjustment rate of not greater than ninety-five percent (95%) and not less than seventy-five percent (75%);

(ii) Subtract the Class I price specified in § 1000.50(a) of this chapter for the county in which the shipping farm is located from the Class I price applicable for the county in which the receiving pool distributing plant is located;

(iii) Multiply the adjusted miles so computed in paragraph (f)(1)(i) of this section by the monthly mileage rate factor for the month computed pursuant to paragraph (h) of this section;

(iv) Subtract any positive difference in Class I prices computed in paragraph (f)(1)(ii) of this section from the rate determined in paragraph (f)(1)(iii) of this section;

(v) Multiply the remainder computed in paragraph (f)(1)(iv) of this section by the hundredweight of milk described in paragraph (e)(1) of this section.

(2) With respect to milk delivered from a pool supply plant to a distributing plant:

(i) Determine the shortest hard-surface highway distance between the transferring pool plant and the receiving plant, and multiply the miles by an adjustment rate not greater than ninety-five percent (95%) and not less than seventy-five percent (75%);

(ii) Subtract the Class I price specified in § 1000.50(a) of this chapter for the transferring pool plant from the Class I price applicable for the county in which the receiving pool distributing plant is located;

(iii) Multiply the adjusted miles so computed in paragraph (f)(2)(i) of this section by the mileage rate factor for the month computed pursuant to paragraph (h) of this section;

(iv) Subtract any positive difference in Class I prices computed in paragraph (f)(2)(ii) of this section from the rate determined in paragraph (f)(2)(iii) of this section;

(v) Multiply the remainder computed in paragraph (f)(2)(iv) of this section by the hundredweight of milk described in paragraph (e)(2) of this section.

(g) *Mileage percentage rate adjustment.* The monthly percentage rate adjustment within the range of permissible percentage adjustments provided in paragraphs (f)(1)(i) and (f)(2)(i) of this section shall be determined by the market administrator, and publicly announced prior to the month for which effective. In determining the percentage adjustment to the actual mileages of milk delivered from farms and milk transferred from pool plants the market administrator shall evaluate the general supply and demand for milk in the marketing area, any previous occurrences of sustained uneconomic movements of milk, and the balances in the distributing plant delivery credit fund. The adjustment percentage pursuant to paragraphs (f)(1)(i) and (f)(2)(i) of this section to the actual miles used for computing distributing plant delivery credits and announced by the market administrator shall always be the same percentage.

(h) *Mileage rate for the distributing plant delivery credit fund.* The mileage rate for the distributing plant delivery credit fund shall be the mileage rate computed by the market administrator pursuant to § 1005.83.

(i) *Oversight of milk movements.* The market administrator shall regularly monitor and evaluate the requests for distributing plant delivery credits to determine that such credits are not encouraging uneconomic movements of milk, and that the credits continue to assure orderly marketing and efficient handling of milk in the marketing area. In making such determinations, the market administrator will include in the evaluation

the general supply and demand for milk. If the market administrator finds that uneconomic movements are occurring, and such movements are persistent and pervasive, or are not being made in a way that assures orderly marketing and efficient handling of milk in the marketing area, after good cause shown, the market administrator may disallow the payments of distributing plant delivery credit on such milk. Before making such a finding, the market administrator shall give the handler of such milk sufficient notice that an investigation is being considered and shall provide notice that the handler has the opportunity to explain why such movements were necessary, or the opportunity to correct such movements prior to the disallowance of any distributing plant delivery credits. Any disallowance of distributing plant delivery credit pursuant to this provision shall remain confidential between the market administrator and the handler.

PART 1006 - MILK IN THE FLORIDA MARKETING AREA

8. The authority citation for part 1006 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

9. Amend § 1006.30 by:

- a. Redesignating paragraphs (a)(5) and (6) as paragraphs (a)(7) and (8), respectively;
- b. Adding new paragraphs (a)(5) and (6); and
- c. Adding paragraph (c)(3).

The additions read as follows:

§ 1006.30 Reports of receipts and utilization.

(a) * * *

(5) Receipts of producer milk described in § 1006.84(e), including the identity of the individual producers whose milk is eligible for the distributing plant delivery credit pursuant to that paragraph and the date that such milk was received;

(6) For handlers submitting distributing plant delivery credit requests, transfers of bulk unconcentrated milk to nonpool plants, including the dates that such milk was transferred.

* * * * *

(c) * * *

(3) With respect to milk for which a cooperative association is requesting a distributing plant delivery credit pursuant to § 1006.84, all of the information required in paragraphs (a)(5) and (6) of this section.

* * * * *

10. Revise § 1006.32 to read as follows:

§ 1006.32 Other reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1000.9(a) and (c) of this chapter shall report to the market administrator any adjustments to distributing plant delivery credit requests as reported pursuant to § 1006.30(a)(5) and (6).

(b) In addition to the reports required pursuant to §§ 1006.30 and 1006.31 and paragraph (a) of this section, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

11. Add an undesignated center heading preceding the undesignated center heading "Administrative Assessment and Marketing Service Deduction" to read as follows: *Marketwide Service Payments*.

12. Add § 1006.84 preceding the undesignated center heading "Administrative Assessment and Marketing Service Deduction" to read as follows:

§ 1006.84 Distributing plant delivery credits.

(a) *Distributing plant delivery credit fund.* The market administrator shall maintain a separate fund known as the Distributing Plant Delivery Credit Fund into which shall be deposited the payments made by handlers pursuant to paragraph (b) of this section and out of which shall be made the payments due handlers pursuant to § 1005.84(b) of this chapter. Payments due a handler shall be offset against payments due from the handler.

(b) *Payments to the distributing plant delivery credit fund.* On or before the 12th day after the end of the month (except as provided in § 1000.90 of this chapter), each handler operating a pool plant and each handler specified in § 1000.9(c) of this chapter shall pay to the market administrator a distributing plant delivery credit fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1006.44 by a per hundredweight assessment rate of \$0.85 or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total distributing plant delivery credit disbursed during the prior calendar year. If the distributing plant delivery credit fund is in an overfunded position, the market administrator may completely waive the distributing plant delivery credit assessment for one or more months. In determining the distributing plant delivery credit assessment rate, in the event that during any month of that previous calendar year the fund balance was insufficient to cover the amount of credits that were due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(c) *Assessment rate announcement.* The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90 of this chapter) the assessment rate per hundredweight pursuant to paragraph (b) of this section for the following month.

(d) *Payments from the distributing plant delivery credit fund.* Payments from the distributing plant delivery credit fund to handlers and cooperative associations requesting distributing plant delivery credits shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90 of this chapter) after the end of each month, the market administrator shall pay to each handler that received, and reported pursuant to § 1006.30(a)(5), bulk unconcentrated milk directly from producers' farms, or receipts of bulk unconcentrated milk by transfer from a pool supply plant as defined in § 1006.7(c) or (d), a preliminary amount determined pursuant to paragraph (f) of this section to the extent that funds are available in the distributing plant delivery credit fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the distributing plant delivery credit fund by reducing payments pro rata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (d)(3) of this section.

(2) The market administrator shall accept adjusted requests for distributing plant delivery credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1006.32(a). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of distributing plant delivery credit payments for the preceding month pursuant to the process provided in paragraph (d)(1) of this section. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments to or from the distributing plant delivery credit fund will be made on or before the next payment date for the following month.

(3) Distributing plant delivery credits paid pursuant to paragraphs (d)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant

to § 1000.77 of this chapter. Adjusted payments to or from the distributing plant delivery credit fund will remain subject to the final proration established pursuant to paragraph (d)(2) of this section.

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1006.30(c)(3) prior to the date payment is due, the distributing plant delivery credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(5) The market administrator shall provide monthly, to producers who are not members of a qualified cooperative association, a statement of the amount per hundredweight of distributing plant delivery credit which the distributing plant handler receiving their milk is entitled to claim.

(e) *Eligible milk.* Distributing plant delivery credits shall apply to the following milk:

(1) Bulk unconcentrated fluid milk received at a pool distributing plant as producer milk directly from dairy farms located within the marketing area; or located within the Georgia counties of Appling, Atkinson, Bacon, Baker, Ben Hill, Berrien, Brooks, Calhoun, Charlton, Chattahoochee, Clay, Clinch, Coffee, Cook, Colquitt, Crisp, Decatur, Dodge, Dooley, Dougherty, Early, Echols, Grady, Irwin, Lanier, Lee, Lowndes, Jeff Davis, Macon, Marion, Miller, Mitchell, Pierce, Pulaski, Quitman, Randolph, Schley, Seminole, Stewart, Sumter, Telfair, Terrel, Thomas, Tift, Turner, Ware, Webster, Wilcox, and Worth, and received at pool distributing plants. The quantity of milk described herein shall be reduced by the quantity of any bulk unconcentrated fluid milk products transferred from a pool distributing plant to a nonpool plant or transferred to a

pool supply plant on the same calendar day as producer milk was received at such plant for which a distributing plant delivery credit is requested.

(2) Bulk unconcentrated fluid milk transferred from a pool plant regulated pursuant to § 1006.7(c) or (d) to a pool distributing plant regulated pursuant to § 1006.7(a) or (b). The quantity of milk described herein shall be reduced by the quantity of any bulk unconcentrated fluid milk products transferred from a pool distributing plant to a nonpool plant or transferred to a pool supply plant on the same calendar day as milk was received by transfer from a pool supply plant at such pool distributing plant for which a distributing plant delivery credit is requested.

(f) *Credit computation.* Distributing plant delivery credits shall be computed as follows:

(1) With respect to milk delivered directly from the farm to a distributing plant:

(i) Determine the shortest hard-surface highway distance between the shipping farm's county seat and the receiving plant and multiply the miles by an adjustment rate of not greater than ninety-five percent (95%) and not less than seventy-five percent (75%);

(ii) Subtract the Class I price specified in § 1000.50(a) of this chapter for the county in which the shipping farm is located from the Class I price applicable for the county in which the receiving pool distributing plant is located;

(iii) Multiply the adjusted miles so computed in (f)(1)(i) of this section by the monthly mileage rate factor for the month computed pursuant to paragraph (h) of this section;

(iv) Subtract any positive difference in Class I prices computed in paragraph (f)(1)(ii) of this section from the rate determined in paragraph (f)(1)(iii) of this section;

(v) Multiply the remainder computed in paragraph (f)(1)(iv) of this section by the hundredweight of milk described in paragraph (e)(1) of this section;

(2) With respect to milk delivered from a pool supply plant to a distributing plant:

(i) Determine the shortest hard-surface highway distance between the transferring pool plant and the receiving plant, and multiply the miles by an adjustment rate of not greater than ninety-five percent (95%) and not less than seventy-five percent (75%);

(ii) Subtract the Class I price specified in § 1000.50(a) of this chapter for the transferring pool plant from the Class I price applicable for the county in which the receiving pool distributing plant is located;

(iii) Multiply the adjusted miles so computed in paragraph (f)(2)(i) of this section by the mileage rate factor for the month computed pursuant to paragraph (h) of this section;

(iv) Subtract any positive difference in Class I prices computed in paragraph (f)(2)(ii) from the rate determined in paragraph (f)(2)(iii) of this section;

(v) Multiply the remainder computed in paragraph (f)(2)(iv) of this section by the hundredweight of milk described in paragraph (e)(2) of this section.

(g) *Mileage percentage rate adjustment.* The monthly percentage rate adjustment within the range of permissible percentage adjustments provided in paragraphs (f)(1)(i) and (f)(2)(i) of this section shall be determined by the market administrator, and publicly announced prior to the month for which effective. In determining the percentage adjustment to the actual mileages of milk delivered from farms and milk transferred from pool plants the market administrator shall evaluate the general supply and demand for milk in the marketing area, any previous occurrences of sustained uneconomic movements of milk, and the balances in the distributing plant delivery credit fund. The adjustment percentage pursuant to paragraphs (f)(1)(i) and (f)(2)(i) to of this section the actual miles used for computing distributing plant credits and announced by the market administrator shall always be the same percentage.

(h) *Mileage rate for the distributing plant delivery credit fund.* The market administrator shall compute a mileage rate factor each month as follows:

(1) Compute the simple average rounded down to three decimal places for the most recent four (4) weeks of the Diesel Price per Gallon as reported by the Energy Information Administration of the United States Department of Energy for the Lower Atlantic and Gulf Coast Districts combined;

(2) From the result in paragraph (h)(1) of this section subtract \$2.26 per gallon;

(3) Divide the result in paragraph (h)(2) of this section by 6.2, and round down to three decimal places to compute the fuel cost adjustment factor;

(4) Add the result in paragraph (h)(3) of this section to \$3.67;

(5) Divide the result in paragraph (h)(4) of this section by 497;

(6) Round the result in paragraph (h)(5) of this section down to five decimal places to compute the mileage rate.

(i) *Oversight of milk movements.* The market administrator shall regularly monitor and evaluate the requests for distributing plant delivery credits to determine that such credits are not encouraging uneconomic movements of milk, and the credits continue to assure orderly marketing and efficient handling of milk in the marketing area. In making such determinations the market administrator will include in the evaluation the general supply and demands for milk. If the market administrator finds that uneconomic movements are occurring, and such movements are persistent and pervasive, or are not being made in a way that assures orderly marketing and efficient handling of milk in the marketing area, after good cause shown, the market administrator may disallow the payments of distributing plant delivery credit on such milk. Before making such a finding, the market administrator shall give the handler on such milk sufficient notice that an investigation is being considered and shall provide notice that the handler has the opportunity to explain why such movements were necessary, or the opportunity to correct such movements prior to the disallowance of any distributing plant delivery credits. Any

disallowance of distributing plant delivery credit pursuant to this provision shall remain confidential between the market administrator and the handler.

PART 1007 - MILK IN THE SOUTHEAST MARKETING AREA

13. The authority citation for part 1007 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

14. Amend § 1007.30 by:

a. Redesignating paragraphs (a)(5) through (9) as paragraphs (a)(7) through (11), respectively;

b. Adding new paragraphs (a)(5) and (6);

c. Redesignating paragraph (c)(3) as paragraph (c)(4) and revising it; and

d. Adding new paragraph (c)(3).

The revisions and additions read as follows.

§ 1007.30 Reports of receipts and utilization.

(a) * * *

(5) Receipts of producer milk described in § 1007.84(e), including the identity of the individual producers whose milk is eligible for the distributing plant delivery credit pursuant to that paragraph and the date that such milk was received;

(6) For handlers submitting distributing plant delivery credit requests, transfers of bulk unconcentrated milk to nonpool plants, including the dates that such milk was transferred;

* * * * *

(c) * * *

(3) With respect to milk for which a cooperative association is requesting a distributing plant delivery credit pursuant to § 1007.84, all of the information required in paragraphs (a)(5) and (6) of this section.

(4) With respect to milk for which a cooperative association is requesting a

transportation credit pursuant to § 1007.82, all of the information required in paragraphs (a)(7) through (9) of this section.

* * * * *

15. Amend § 1007.32 by revising paragraph (a) to read as follows:

§ 1007.32 Other reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1000.9(a) and (c) of this chapter shall report to the market administrator any adjustments to distributing plant delivery credit requests as reported pursuant to § 1007.30(a)(5) and (6) and any adjustments to transportation credit requests as reported pursuant to § 1007.30(a)(7) through (9) of this part.

* * * * *

16. Amend § 1007.81 by revising the first sentence of paragraph (a) to read as follows:

§ 1007.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90 of this chapter), each handler operating a pool plant and each handler specified in § 1000.9(c) of this chapter shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1007.44 by \$0.60 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June through February period to reflect any changes in the current mileage rate versus the mileage rate(s) in effect during the prior June through February period. * * *

* * * * *

17. Amend § 1007.82 by:

- a. Revising the first sentence of paragraph (a)(1), the first sentence of paragraph (b), and paragraph (d)(3)(iii); and
- b. Adding paragraph (d)(3)(viii).

The revisions and addition read as follows:

§ 1007.82 Payments from the transportation credit balancing fund.

(a) * * *

(1) On or before the 13th day (except as provided in § 1000.90) after the end of each of the months of January, and July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1007.30(a)(7), bulk milk transferred from a plant fully regulated under another Federal order as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1007.30(a)(8), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. * * *

(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to the month of February or June if a written request to do so is received fifteen (15) days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. * * *

* * * * *

(d) * * *

(3) * * *

(iii) Subtract 15 percent (15%) of the miles from the mileage so determined;

* * * * *

(viii) The market administrator may revise the factor described in (3)(iii) of this section (the mileage adjustment factor) if a written request to do so is received fifteen (15) days prior to the beginning of the month for which the request is made and, (15) days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such revision is necessary to assure orderly marketing, efficient handling of milk in the marketing area, and an adequate supply of milk for fluid use. The market administrator may increase the mileage adjustment factor by as much as ten percentage points (10%) up to twenty-five percent (25%) or decrease it by as much as ten percentage points (10%), to a minimum of five percent (5%). Before making such a finding, the market administrator shall notify all handlers in the market that a revision is being considered and invite written data, comments, and arguments. Any decision to revise the mileage rate factor must be issued in writing prior to the first day of the month for which the revision is to be effective.

18. Amend § 1007.83 by revising paragraphs (a)(2) through (5) to read as follows:

§ 1007.83 Mileage rate for the transportation credit balancing fund.

(a) * * *

(2) From the result in paragraph (a)(1) of this section subtract \$2.26 per gallon;

(3) Divide the result in paragraph (a)(2) of this section by 6.2, and round down to three decimal places to compute the fuel cost adjustment factor;

(4) Add the result in paragraph (a)(3) of this section to \$3.67;

(5) Divide the result in paragraph (a)(4) of this section by 497;

* * * * *

19. Add § 1007.84 before the undesignated center heading “Administrative Assessment and Marketing Service Deduction” to read as follows:

§ 1007.84 Distributing plant delivery credits.

(a) *Distributing plant delivery credit fund.* The market administrator shall maintain a separate fund known as the Distributing Plant Delivery Credit Fund into which shall be deposited the payments made by handlers pursuant to paragraph (b) of this section and out of which shall be made the payments due handlers pursuant to paragraph (d) of this section. Payments due a handler shall be offset against payments due from the handler.

(b) *Payments to the distributing plant delivery credit fund.* On or before the 12th day after the end of the month (except as provided in § 1000.90 of this chapter), each handler operating a pool plant and each handler specified in § 1000.9(c) of this chapter shall pay to the market administrator a distributing plant delivery credit fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1007.44 by a per hundredweight assessment rate of \$0.50 or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total distributing plant delivery credit disbursed during the prior calendar year. If the distributing plant delivery credit fund is in an overfunded position, the market administrator may completely waive the distributing plant delivery credit assessment for one or more months. In determining the distributing plant delivery credit assessment rate, in the event that during any month of that previous calendar year the fund balance was insufficient to cover the amount of credits that were due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(c) *Assessment rate announcement.* The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90 of this chapter), the assessment rate per hundredweight pursuant to paragraph (b) of this section for the following month.

(d) *Payments from the distributing plant delivery credit fund.* Payments from the distributing plant delivery credit fund to handlers and cooperative associations requesting distributing plant delivery credits shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90 of this chapter) after the end of each month, the market administrator shall pay to each handler that received, and reported pursuant to § 1007.30(a)(5), bulk unconcentrated milk directly from producers' farms, or receipts of bulk unconcentrated milk by transfer from a pool supply plant as defined in § 1007.7(c) or (d), a preliminary amount determined pursuant to paragraph (f) of this section to the extent that funds are available in the distributing plant delivery credit fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the distributing plant delivery credit fund by reducing payments pro rata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (d)(3) of this section.

(2) The market administrator shall accept adjusted requests for distributing plant delivery credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1007.32(a). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of distributing plant delivery credit payments for the preceding month pursuant to the process provided in paragraph (d)(1) of this section. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments to or from the distributing plant delivery credit fund will be made on or before the next payment date for the following month.

(3) Distributing plant delivery credits paid pursuant to paragraphs (d)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant

to § 1000.77 of this chapter. Adjusted payments to or from the distributing plant delivery credit fund will remain subject to the final proration established pursuant to paragraph (d)(2) of this section.

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1007.30(c)(3) prior to the date payment is due, the distributing plant delivery credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(5) The market administrator shall provide monthly to producers who are not members of a qualified cooperative association a statement of the amount per hundredweight of distributing plant delivery credit which the distributing plant handler receiving their milk is entitled to claim.

(e) *Eligible milk.* Distributing plant delivery credits shall apply to the following milk:

(1) Bulk unconcentrated fluid milk received directly from dairy farms at a pool distributing plant as producer milk subject to the following conditions:

(i) The farm on which the milk was produced is located within the specified marketing areas of the order in this part or the marketing area of Federal Order 1005 (7 CFR part 1005).

(ii) The farm on which the milk was produced is located in the following counties in the State of:

(A) Illinois: Alexander, Bond, Clay, Clinton, Crawford, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Johnson, Lawrence, Marion, Massac, Monroe, Montgomery, Perry, Pope, Pulaski, Randolph,

Richland, St Clair, Saline, Union, Washington, Wayne, White, Williamson, Calhoun, Greene, Jersey, Macoupin, Madison, and Wabash.

(B) Kansas: Allen, Anderson, Bourbon, Chautauqua, Cherokee, Coffey, Crawford, Douglas, Elk, Franklin, Greenwood, Jefferson, Johnson, Labette, Leavenworth, Linn, Lyon, Miami, Montgomery, Neosho, Osage, Shawnee, Wabaunsee, Wilson, Woodson, and Wyandotte

(C) Missouri: Audrain, Bates, Benton, Boone, Callaway, Camden, Cass, Clay, Cole, Cooper, Franklin, Gasconade, Henry, Hickory, Howard, Jackson, Jefferson, Johnson, Lafayette, Lincoln, Maries, Miller, Moniteau, Montgomery, Morgan, Osage, Pettis, Phelps, Pike, Platte, Pulaski, Ray, St Charles, St Clair, Ste Genevieve, St Louis, St. Louis City, Saline, and Warren

(D) Oklahoma: Adair, Atoka, Bryan, Cherokee, Choctaw, Coal, Craig, Creek, Delaware, Haskell, Hughes, Latimer, Le Flore, McCurtain, McIntosh, Mayes, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee, Pittsburg, Pushmataha, Rogers, Sequoyah, Tulsa, Wagoner, and Washington

(E) Texas: Anderson, Angelina, Bowie, Camp, Cass, Chambers, Cherokee, Delta, Fannin, Franklin, Galveston, Gregg, Hardin, Harris, Harrison, Henderson, Hopkins, Houston, Hunt, Jasper, Jefferson, Kaufman, Lamar, Liberty, Marion, Montgomery, Morris, Nacogdoches, Newton, Orange, Panola, Polk, Rains, Red River, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Trinity, Tyler, Upshur, Van Zandt, Walker, and Wood.

(iii) The Market Administrator may include additional counties from the states listed in paragraph (e)(1)(ii) of this section upon the request of a pool handler and provision of satisfactory proof that the county is a source of regular supply of milk to order distributing plants.

(iv) Producer milk eligible for a payment under this section cannot be eligible for payment from the transportation credit balancing fund as specified in § 1007.82(c)(2).

(v) The quantity of milk described herein shall be reduced by the quantity of any bulk unconcentrated fluid milk products transferred from a pool distributing plant to a nonpool plant or transferred to a pool supply plant on the same calendar day as producer milk was received at such plant for which a distributing plant delivery credit is requested.

(2) Bulk unconcentrated fluid milk transferred from a pool supply plant regulated pursuant to § 1007.7(c) or (d) to a pool distributing plant regulated pursuant to § 1007.7(a) or (b). The quantity of milk described herein shall be reduced by the quantity of any bulk unconcentrated fluid milk products transferred from a pool distributing plant to a nonpool plant or transferred to a pool supply plant on the same calendar day as milk was received by transfer from a pool supply plant at such pool distributing plant for which a distributing plant delivery credit is requested.

(f) *Credit computation.* Distributing plant delivery credits shall be computed as follows:

(1) With respect to milk delivered directly from the farm to a distributing plant:

(i) Determine the shortest hard-surface highway distance between the shipping farm's county seat and the receiving plant, and multiply the miles by an adjustment rate of not greater than ninety-five percent (95%) and not less than seventy-five percent (75%);

(ii) Subtract the Class I price specified in § 1000.50(a) of this chapter for the county in which the shipping farm is located from the Class I price applicable for the county in which the receiving pool distributing plant is located;

(iii) Multiply the adjusted miles so computed in (f)(1)(i) of this section by the monthly mileage rate factor for the month computed pursuant to paragraph (h) of this section;

(iv) Subtract any positive difference in Class I prices computed in paragraph (f)(1)(ii) of this section from the rate determined in paragraph (f)(1)(iii) of this section;

(v) Multiply the remainder computed in paragraph (f)(1)(iv) of this section by the hundredweight of milk described in paragraph (e)(1) of this section;

(2) With respect to milk delivered from a pool supply plant to a distributing plant:

(i) Determine the shortest hard-surface highway distance between the transferring pool plant and the receiving plant, and multiply the miles by an adjustment rate of not greater than ninety-five (95%) percent and not less than seventy-five (75%) percent;

(ii) Subtract the Class I price specified in § 1000.50(a) of this chapter for the transferring pool plant from the Class I price applicable for the county in which the receiving pool distributing plant is located;

(iii) Multiply the adjusted miles so computed in paragraph (f)(2)(i) of this section by the mileage rate factor for the month computed pursuant to paragraph (h) of this section;

(iv) Subtract any positive difference in Class I prices computed in paragraph (f)(2)(ii) of this section from the rate determined in paragraph (f)(2)(iii) of this section;

(v) Multiply the remainder computed in paragraph (f)(2)(iv) of this section by the hundredweight of milk described in paragraph (e)(2) of this section;

(g) *Mileage percentage rate adjustment.* The monthly percentage rate adjustment within the range of permissible percentage adjustments provided in paragraphs (f)(1)(i) and (f)(2)(i) of this section shall be determined by the market administrator, and publicly announced prior to the month for which effective. In determining the percentage adjustment to the actual mileages of milk delivered from farms and milk transferred from pool plants the market administrator shall evaluate the general supply and demand for milk in the marketing area, any previous occurrences of sustained uneconomic movements of milk, and the balances in the distributing plant delivery credit fund. The

adjustment percentage pursuant to paragraphs (f)(1) and (2) of this section to the actual miles used for computing distributing plant delivery credits and announced by the market administrator shall always be the same percentage.

(h) *Mileage rate for the distributing plant delivery credit fund.* The mileage rate for the distributing plant delivery credit fund shall be the mileage rate computed by the market administrator pursuant to § 1007.83.

(i) *Oversight of milk movements.* The market administrator shall regularly monitor and evaluate the requests for distributing plant delivery credits to determine that such credits are not encouraging uneconomic movements of milk, and the credits continue to assure orderly marketing and efficient handling of milk in the marketing area. In making such determinations the market administrator will include in the evaluation the general supply and demand for milk. If the market administrator finds that uneconomic movements are occurring, and such movements are persistent and pervasive, or are not being made in a way that assures orderly marketing and efficient handling of milk in the marketing area, after good cause shown, the market administrator may disallow the payments of distributing plant delivery credit on such milk. Before making such a finding, the market administrator shall give the handler on such milk sufficient notice that an investigation is being considered and shall provide notice that the handler has the opportunity to explain why such movements were necessary, or the opportunity to correct such movements prior to the disallowance of any distributing plant delivery credits. Any disallowance of distributing plant delivery credit pursuant to this provision shall remain confidential between the market administrator and the handler.

Erin Morris,

Associate Administrator,

Agricultural Marketing Service.

